

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-010 Purpose of the regulation. (~~((This chapter, promulgated under chapter 70.94 RCW, the Washington Clean Air Act,))~~ Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the department of ecology and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes controls for agricultural burning in the state in order to minimize adverse health and the environment effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. The control strategies include:

(1) Establishing a permit program with minimum statewide requirements and specific burn authorizations.

(2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.

(3) Encouraging and developing economically feasible alternative methods to agricultural burning.

(4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.

(5) Providing for local administration of the permitting program through delegation.

(6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.

(7) Making use of metering as a component of the agricultural

burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.

(8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.

(9) Providing for education and communication.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-010, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-010, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-010, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-010, filed 11/9/77. Formerly WAC 18-16-010.]

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities (~~((and includes the burning of fields, prunings, weeds, and irrigation ditches, drainage ditches, fence rows or other essential pathways))~~). It does not apply to silvicultural burning or (~~((open))~~) other outdoor burning (chapter 173-425 WAC).

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available (RCW 70.94.650).

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and regulations, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial agricultural activities (RCW 70.94.745). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-020, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-020, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-020, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-020, filed 11/9/77. Formerly WAC 18-16-020.]

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or (~~(proof that the land is designated in a classification for agricultural use)~~) its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) **Ag task force:** Means the agricultural burning practices and research task force.

(4) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

(5) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (Ag task force).

~~((+5+))~~ (6) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

~~((+6+))~~ (7) **Department:** Means the department of ecology.

~~((+7+))~~ (8) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons ~~((using such products as ingredients in a manufacturing process, or persons))~~ growing or producing such products primarily for their own consumption.

~~((+8+Open))~~ (9) **Impaired air quality:** Means a first or second stage impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW 70.94.715, 70.94.775, and 70.94.473.

(a) A first stage of impaired air quality is reached when:

(i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four-hour average; and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(b) A second stage of impaired air quality is reached when:

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four-hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

~~((+9+))~~ (11) **Permitting authority:** Means ecology or its delegate or a local air authority ~~((and the department where no local air authority exists))~~ with jurisdiction or ((their)) its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

~~((+10+))~~ (12) **Silvicultural burning:** Means burning on any

land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.

[Statutory Authority: RCW 70.94.656. 98-12-016 (Order 97-45), § 173-430-030, filed 5/26/98, effective 6/26/98. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-030, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-030, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-030, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-030, filed 11/9/77. Formerly WAC 18-16-030.]

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, the department of ecology or local air authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific

fire burn calls in areas where PM2.5 concentrations are regularly monitored will follow the procedures in (c) of this subsection at the time of making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM2.5 concentration was equal to or greater than 16 micrograms per cubic meter. This is division between "good" and "moderate" classifications of the U.S. Environmental Protection Agency's Air Quality Index (AQI) for particulate matter based on the National Ambient Air Quality Standard of 65 micrograms per cubic meter.

(ii) A two-hour rolling average PM2.5 concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM2.5 concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of such determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM2.5 concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations pursuant to the smoke management index.

(f) Pursuant to RCW 70.94.473 and 70.94.775, no burning shall be authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed

unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by RCW 70.94.656 and/or by RCW 70.94.650.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

~~((b))~~ (c) A farmer must fill out the information requested on a permit application ~~((for the permit) and return))~~, pay the permitting fee, and submit it to the permitting authority for review and approval prior to burning.

~~(i) ((The permitting authority may require the farmer to fill out an application prior to issuing a permit.~~

~~((ii))~~ The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: ~~((Range,))~~ Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

~~((iii))~~ (ii) All applications must comply with other state or local regulations.

~~((c))~~ (d) The permitting authority must evaluate the application, ~~((if there is one,))~~ and approve the permit prior to burning.

~~((d))~~ (e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air authority with jurisdiction, or its delegate must approve or deny the permit in part or in whole based on information in the application.

(g) Ecology and its delegate or a local air ~~((agencies (and the department where no local air agency exists))~~ agency with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW 70.94.743.

~~((3))~~ (4) All agricultural burning permits require a fee. ~~((After January 1, 1995, the fee is the greater of:~~

~~(a) A minimum fee of~~) Maximum fee level is set by statute at two dollars and fifty cents per acre (RCW 70.94.650(2)) and is established by the agricultural burning practices and research task force (RCW 70.94.650(4)). The fee is the greater of a minimum fee level or a variable fee level.

(a) Minimum fee levels:

(i) Twenty-five dollars per calendar year per ((farm)) agricultural operation based on burning up to ten acres or equivalent ((which will be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund and the remainder will be kept by the permitting authority to cover the costs of administering and enforcing this regulation; or));

(ii) Fifty dollars for orchard tear-out burning per calendar year per agricultural operation based on burning debris from up to twenty acres or equivalent.

(b) ((A)) The variable fee level (based on the acreage or equivalent ((of agricultural burning which will be used as follows: Up to one dollar per acre for applied research, twenty-five cents per acre for ecology administration and up to one dollar and twenty-five cents per acre for local permit program)));

(i) Through the calendar year 2007, the fee is two dollars per acre.

(ii) Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.

(c) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.

(i) Local permitting program administration. ((One portion of the fee shall cover the permitting authority's costs of administering and enforcing the program.)) The permitting authority may set the fee as an amount per ((farm)) agricultural operation per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department ((is the)) has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.

(ii) Ecology administration. ((Another)) This portion of the fee shall be ((twenty-five cents per acre burned and cover)) used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program. ((The amount (if any) by which the annual total, of this portion of the fee, exceeds the annual statewide administrative, education, and oversight costs shall be deposited in the agricultural burning research fund of the air pollution control account.))

(iii) Research fund. ((A final portion,)) The agricultural burning applied research portion((7)) of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the ((Ag)) agricultural burning practices and research task

force based on applied research needs, regional needs and the research fund budget. ~~((The research portion of the fee assessed shall be fifty cents per acre burned starting in calendar year 1995-))~~ The ~~((Ag))~~ agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.

~~((c))~~ (iv) The chart below shows the permit fee break-out per category:

<u>Fee Level</u>	<u>Section</u>	<u>Local Administration</u>	<u>Research</u>	<u>Ecology Administration</u>
<u>\$25.00</u>	<u>WAC 173-430-040</u> <u>(4)(a)(i)</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>-0-</u>
<u>\$50.00</u>	<u>WAC 173-430-040</u> <u>(4)(a)(ii)</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>\$25.00</u>
<u>2006 - \$2.00</u> <u>per acre</u>	<u>WAC 173-430-040</u> <u>(4)(b)(i)</u>	<u>Up to \$1.25 per acre</u>	<u>50 cents per acre</u>	<u>25 cents per acre</u>
<u>2007 - \$2.00</u> <u>per acre</u>	<u>WAC 173-430-040</u> <u>(4)(b)(i)</u>	<u>Up to \$1.25 per acre</u>	<u>25 cents per acre</u>	<u>50 cents per acre</u>
<u>2008 and</u> <u>beyond -</u> <u>\$2.25 per</u> <u>acre</u>	<u>WAC 173-430-040</u> <u>(4)(b)(ii)</u>	<u>Up to \$1.25 per acre</u>	<u>50 cents per acre</u>	<u>50 cents per acre</u>

(d) A farmer must pay the fee ~~((prior to receiving a permit))~~ when submitting the application. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.

~~((d))~~ (e) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.

~~((4))~~ (5) All agricultural burning permits must ~~((be conditioned))~~ include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) ~~((For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis, or as provided by RCW 70.94.656.~~

~~((c))~~ Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include the

use of a daily burn decision, permit specific decisions and/or metering.

(c) The permitting authority must act on a complete application (as determined by the agency) within seven days of receipt.

(i) The permitting authority must evaluate the application and approve or deny all or part of it.

(ii) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(iii) If the application is denied, the reason must be stated.

(6) Additional requirements for burning of field and turf grasses grown for seed.

The department of ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.656(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.656(4).

(a) Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

~~((d) Additional requirements for burning of field and turf grasses grown for seed. Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~((e))~~ (b) Exemptions to ((additional)) the requirements for burning of field and turf grasses grown for seed (((d))) (a) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of ~~((d))~~ (a) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(i) The exemption request must be certified by an agronomic professional;

(ii) The farmer must be able to show full compliance with the emissions reductions in ~~((d))~~ (a) of this subsection for the acreage not exempted; and

(iii) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

~~((f))~~ (c) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.

(d) The department of ecology or local air authority may provide for trading of permits using the method described in ~~((f)(i), (ii), (iii), (iv), (v), and (vi) of))~~ this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed.

(i) Ecology or the local air authority may develop a system that allows the trading of permits by:

(A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(D) Assuring that the permits are used only once in a calendar year.

(ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.

(v) Acreage that is exempted under (e) of this subsection is not eligible for the trading system.

(vi) The authorities are encouraged to work together to use the same system and to allow trading between authority

jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

~~((g) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.~~

~~((h))~~ (e) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of ~~((d))~~ (a) of this subsection provided:

(i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by ~~((d))~~ (a) of this subsection; and

(ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in ~~((d))~~ (a) of this subsection.

~~((5))~~ (7) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, regulations, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

[Statutory Authority: RCW 70.94.656. 98-12-016 (Order 97-45), § 173-430-040, filed 5/26/98, effective 6/26/98. Statutory Authority: RCW 70.94.656(4). 97-03-021 (Order 96-05), § 173-430-040, filed 1/7/97, effective 2/7/97. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-040, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-040, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-040, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-040, filed 11/9/77. Formerly WAC 18-16-040.]

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-060 Research into alternatives to agricultural burning. (1) The department shall administer the research portion

of the permit fee to carry out the recommendations of the Ag task force. In carrying out the recommendations, the department may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct any such study, the department may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible.

(2) No less than every two years, the Ag task force will (~~annually~~) review research needs and submitted proposals and make its recommendations to the department.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-060, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-060, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-060, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-060, filed 11/9/77. Formerly WAC 18-16-060.]

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) (~~No burning~~) Do not burn at night (~~except~~) unless it is specified as a best management practice;

(b) (~~Complying~~) Comply with all fire safety regulations of the local fire protection agency including any no-burn directives (~~they~~) it may issue;

(c) (~~Calling~~) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) (~~Burning~~) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(~~e~~) ~~No burning~~ (f) Do not burn when adverse meteorological conditions exist;

(~~f~~) ~~Burning~~ (g) Burn only natural vegetation;

~~((g) No burning or adding))~~ (h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

~~((h) Attending))~~ (i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-070, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-070, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-070, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-070, filed 11/9/77. Formerly WAC 18-16-070.]

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-080 Responsibilities of a permitting authority.

(1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

~~((1))~~ (2) The permitting authority must act on a complete application (as determined by ~~((the agency))~~ ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map is required to accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, landmarks, etc.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section shall be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

~~((b))~~ (d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

~~((c))~~ (e) If the application is denied, the reason must be

stated.

~~((+2))~~ (3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

~~((+3))~~ (5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

~~((+4))~~ (6) The permitting authority must collect the fee ((and)), determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund ((when a farmer decides to burn fewer acres than identified in the permit)) for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

~~((+5) The permitting authority must))~~ (7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and ecology administration portion of the fee to the department.

(a) ((Funds should be transferred twice a year or as designated in the delegation agreement.

~~(b))~~ Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) The department must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to the department. ((The portion of the fee designated for research shall be deposited in a special account in the air pollution control account.

~~(+6))~~ (8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must utilize the web-based data base.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-080, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-080, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-080, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-080, filed 11/9/77. Formerly WAC 18-16-080.]

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-090 Receiving delegation--Counties, conservation districts, and fire protection agencies. (1) The permitting authority is ~~((the local air authority (or the department where no local air authority exists),))~~ ecology or ((their)) its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority ~~((or the department where no local air authority exists))~~ with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration and/or enforcement authority of the program. ~~((Delegation criteria include:))~~ The delegated permitting authority must, at a minimum, meet all of the following criteria:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled; ~~((and))~~

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if the department or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered and/or enforced. Before withdrawing delegation, the delegated agency shall be given a written statement of the deficiencies in the program and a

compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then the department or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement prior to implementation.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-090, filed 1/17/95, effective 2/17/95.]